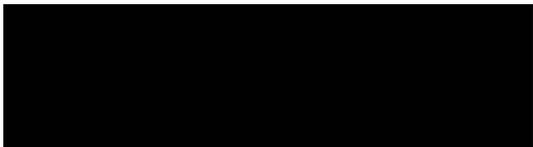


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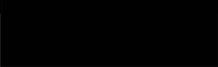
U.S. Citizenship  
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Services

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JUN 15 2007

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

XLA-88-507-1253

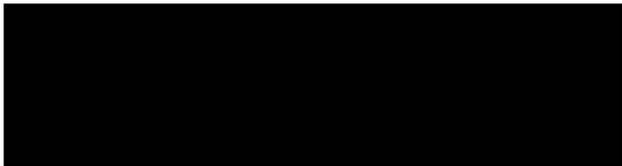
IN RE:

Applicant:



APPLICATION: Application for Temporary Resident Status under Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The termination of the applicant's temporary resident status by the Director, California Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant was convicted of one felony offense and one misdemeanor offense. The director terminated the applicant's temporary resident status on this basis.

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii).

On appeal, counsel asserts that the applicant has not been convicted of a felony and a misdemeanor, as stated in the director's decision. Counsel maintains that the applicant has instead been convicted of two misdemeanors, which does not preclude his eligibility for temporary resident status.

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

"Conviction" is defined under section 101(a)(48)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(48)(A) as a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Court documents in the record and an FBI report based upon the applicant's fingerprints reveal that he was convicted of *Disturbing the Peace* in violation of section 415 of the California Penal Code on March 31, 1997 (Docket # [REDACTED]). The applicant was sentenced to twelve months probation and one day imprisonment. Section 415 of the California Penal Code provides that this offense is punishable by imprisonment in the county jail for a period of not more than 90 days, a

fine of not more than four hundred dollars (\$400), or both such imprisonment and fine. This crime is defined as a misdemeanor under 8 C.F.R. § 245a.1(o).

Court documents in the record and the FBI report also reveal that the applicant was convicted of *Driving Under the Influence of Alcohol/Drugs Causing Bodily Injury* in violation of section 23153(a) of the California Vehicle Code on October 23, 1989 (Docket # [REDACTED]). He was sentenced to 36 months probation and 180 days imprisonment. Section 23153(a) of the California Vehicle Code provides that this offense is punishable by imprisonment in the state prison, or in the county jail for not less than 90 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). This crime is defined as a misdemeanor under 8 C.F.R. § 245a.1(o).

The FBI report reveals that the applicant was arrested by the Los Angeles Police Department on May 4, 2005 and charged with *Hit and Run with Property Damage* (Agency Case [REDACTED]). Section 20002 of the California Vehicle Code entitled, *Duty where property damaged*, provides the punishment for this charge as imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1000), or by both that imprisonment and fine. This crime is defined as a misdemeanor under 8 C.F.R. § 245a.1(o).

The applicant's possible conviction of *Hit and Run with Property Damage*, in violation of section 20002 of the California Vehicle Code, would render him convicted of three misdemeanors. The director's determination that the applicant has been convicted of one felony and one misdemeanor is, therefore, withdrawn. Nevertheless, the applicant would still be ineligible for temporary resident status if he has been convicted of three misdemeanors. See 8 C.F.R. § 245a.3(c)(1).

On June 4, 2001, the director issued a request for certified copies of court dispositions. In response, the applicant submitted court dispositions related to his October 23, 1989 and March 31, 1997 convictions. The applicant subsequently submitted a letter from the Superior Court of California, County of Los Angeles, which states that there were no records found regarding "a May 05, 2005 hit & run charge." However, the FBI report indicates that the applicant was charged on May 4, 2005, not May 5, 2005, as stated in this letter.

On May 9, 2007, the AAO issued a request for the applicant to submit a certified copy of his police record from the Los Angeles Police Department. It was requested that the record should include a summary of the applicant's arrests by the Los Angeles Police Department (LAPD), including the dates, charges and disposition for each arrest. The LAPD arrest summary is issued pursuant to the submission of the applicant's fingerprints. The applicant was also requested to submit a certified court disposition related to his May 4, 2005 charge for *Hit and Run with Property Damage*. The applicant was granted thirty (30) days to respond to this request.

On June 8, 2007, the AAO received a response to the request for evidence from counsel for the applicant. Counsel's response to the request for evidence provides that the applicant could not submit a certified copy of his police record because "the LAPD does not release these records to

arrestees.” Counsel submitted a copy of a letter he sent to the LAPD, dated May 31, 2007, requesting that a certified copy of the applicant’s complete arrest record be forwarded to the AAO. Counsel’s assertion that the applicant could not obtain a copy of his arrest record is inconsistent with information found on the LAPD website.<sup>1</sup> This website provides, “[i]f you have been arrested by the LAPD, you may obtain a summary of your LAPD arrests. The summary will list the dates, charges, and dispositions (if they are on file) for LAPD arrests only . . . You may elect to pick up you[r] arrest summary or have it mailed.”

Counsel submitted a letter from the Superior Court of California, County of Los Angeles, which conducted a record search under the name [REDACTED] with July 4, 1956 as the date of birth. This letter provides that, “no case found for arrest date 5/4/05, arrest charge 2002(a) rc (hit & run), under name and dob shown above.” However, the applicant’s criminal record was discovered through an FBI fingerprint search. FBI records are regulated by law and furnished for official use only. It is the position of CIS that an FBI fingerprint search provides a more thorough account of an applicant’s criminal background than local record searches conducted by name. Therefore, this letter is not conclusive evidence to determine that the applicant has not been convicted of an offense related to his May 4, 2005 charge for *Hit and Run with Property Damage*.

The burden is on the applicant to provide affirmative evidence that he is eligible for temporary resident status. The applicant failed to provide the requested certified copy of his police record. The applicant was notified that if he fails to submit the requested evidence within the allotted thirty day period, the AAO will dismiss his appeal. Since the applicant has failed to comply with the request for evidence, his appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.

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<sup>1</sup> <http://www.lapdonline.org>